

Draft of December 16, 2010

**FORM OF
BILLING AND COLLECTION SERVICES AGREEMENT**

by and between

Indiana Finance Authority

as IFA

and

as Utility

dated as of

_____, _____

FORM OF BILLING AND COLLECTION SERVICES AGREEMENT

This BILLING AND COLLECTION SERVICES AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, _____, by and between the Indiana Finance Authority, an independent body politic and corporate instrumentality of the State of Indiana ("IFA"), and _____ ("Utility").

WITNESSETH:

WHEREAS, Utility is a local gas distribution company, providing natural gas services and billing and collecting fees from the Customers on a periodic basis (collectively, "Utility Services") to "retail end use customers" as defined in Indiana Code 4-4-11.6, as amended (the "Enabling Statute") provided that, for the avoidance of doubt, "retail end use customer" means all Indiana customers of the Utility except for industrial transport customers with an annual volume level of 50,000 dekatherms or greater (collectively, the "Customers" and individually a "Customer");

WHEREAS, pursuant to the Enabling Statute, as amended, IFA has entered into a Substitute Natural Gas Purchase and Sale Agreement (the "PSA") whereby IFA will purchase substitute natural gas ("SNG") from Indiana Gasification, LLC (the "Seller");

WHEREAS, pursuant to Ind. Code 4-4-11.6-30, IFA has entered into a Marketing and Services Agreement (the "Marketing Agreement") with Seller and a qualified third party gas marketer (the "Marketer"), whereby the Marketer will accept delivery of SNG from Seller on behalf of IFA at designated liquid market points and sell such SNG on behalf of IFA into the market;

WHEREAS, Customers may be eligible for Customer Credits or subject to Price Adjustments, both as hereinafter defined, based on the difference in price of SNG sold by Marketer (adjusted to reflect the cost of transportation and other administrative costs) and the price paid by IFA to Seller for the SNG, as adjusted pursuant to the PSA (the "Customer Portion") plus the Utility's incremental costs incurred under the Agreement, as more fully described hereafter; and

WHEREAS, pursuant to the Enabling Statute, Utility (in addition to other utilities as defined by Ind. Code 4-4-11.6-8; collectively the "Subject Utilities") shall either bill and collect from Customers the amount of the Price Adjustment or apply a credit to Customer bills in the amount of the Customer Credit, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, IFA and Utility agree as follows:

1. **Obligations of Utility.** Subject to the terms of this Agreement and pursuant to the Enabling Statute, Utility agrees to provide billing, collection, and other services related to the crediting and charging of the proceeds and costs relating to the IFA's sale of SNG pursuant to the Marketing Agreement, in accordance with the Enabling Statute and any conditions imposed by the Indiana Utility Regulatory Commission or any successor entity ("IURC"), including without limitation, lawfully: (a) billing and collecting the Customer Portion from Customers

when that amount is a negative number and applying that amount as a charge to Customers' bills (a "Price Adjustment"), (b) applying the Customer Portion as a credit to Customers' bills when it is a positive number (a "Customer Credit"), and (c) billing and collecting for all Incremental Costs, as hereinafter defined.

2. **Allocation of Customer Portion.** The allocation of the Customer Portion among all of the Subject Utilities, including the Utility, shall be determined by the IURC based on the proportion of the amount of gas delivered to Customers by Utility to the total amount of gas delivered to Customers by all Subject Utilities in the preceding calendar year (the "Pro Rata Share"). If an industrial transport customer has an annual volume level of 50,000 dekatherms or greater at the beginning of the Term, such customer will not be considered a Customer at any future point during the Term regardless of a reduced annual volume level, reorganization or other reclassification that would otherwise enable them to be classified as a Customer.

3. **Application of Payments Between IFA and Utility.** Within ten (10) days after the end of each month during the Term, IFA will provide, or cause to be provided, to Utility a summary of the prior month's results from the sale of SNG (the "SNG Monthly Report") which SNG Monthly Report shall include all necessary bill adjustments under Section 1, including without limitation: (i) the amount of the Customer Portion (positive or negative) for all SNG sold in the prior month and (ii) the Pro Rata Share of such Customer Portion to either be added as a Customer Credit or billed as a Price Adjustment. If the Customer Portion results in a Customer Credit, then within twenty (20) days after delivery of the SNG Monthly Report, IFA shall pay to Utility via wire transfer of immediately available funds the Pro Rata Share of the Customer Credit. If the Customer Portion results in a Price Adjustment, then within thirty (30) days after delivery of the SNG Monthly Report, Utility shall pay to IFA via wire transfer of immediately available funds the Pro Rata Share of the Price Adjustment. Such payment by the Utility to the IFA for a Price Adjustment shall be made regardless of whether such amounts are actually collected by Utility from Customers pursuant to Section 4 below, as all risk of collection shall remain with the Utility subject to its statutory bad debt collection procedures and other remedies available under Indiana law. In the event an inaccuracy is discovered in any amount shown on an SNG Monthly Report, the inaccuracy and any payments made based thereon shall be corrected and reconciled as soon as reasonably practicable.

4. **Billing of Customers.** Pursuant to Ind. Code § 4-4-11.6-30(c), the IURC shall determine a just and reasonable method for allocating credits and charges to Customers. Consistent with the IURC's prescribed allocation methodology, Utility shall include the Price Adjustment or Customer Credit identified on the SNG Monthly Report in its gas costs attributable to and to be recovered from Customers. Utility shall include the net Price Adjustment/Customer Credit amounts, together with Incremental Costs, in its quarterly gas cost recovery filings as a variance to be recovered from or refunded to Customers over a subsequent twelve month period. Any applicable Customer Portion will be stated separately on regular bills for Utility Services provided by Utility to Customers; provided, however, if the Enabling Statute is changed in the future to remove the requirement to have a separate line item on the bill, the foregoing, will be void as well. If the existing gas cost recovery mechanism is terminated during the term of the Agreement, a new mechanism shall be implemented that will allow adjustments to Customer bills to reflect Price Adjustments, Customer Credits and Incremental Costs to be updated no less often than monthly.

5. **Recovery of Incremental Costs.** Utility shall have the right to recover all costs Utility incurs in performing its obligations under this Agreement that are incremental to the costs that, as determined by the IURC, the Utility would otherwise have incurred in the ordinary course of providing gas service to Customers (“Incremental Costs”). Such Incremental Costs shall include, but not be limited to, information system costs associated with the Agreement, customer service costs responding to inquiries relating to the SNG, regulatory and compliance costs relating to the Agreement, uncollected Price Adjustments, applicable taxes and carrying costs on payments by Utility to IFA in advance of recovery from Customers. Incremental Costs shall be added to the Customer Portion and included in Utility’s quarterly gas cost recovery filings, as described in Section 4. For purposes of Customers’ bills, the Incremental Costs shall not be included as part of the Customer Portion stated on Customer’s bills as described in Section 4. These are administrative costs and should be included in those associated costs on Customer’s bills. In the event of a dispute between the IFA and Utility regarding Incremental Costs, that dispute shall be submitted to the IURC for resolution pursuant to Section 13.

6. **Effect on Provision of Utility Services.** This Agreement shall not affect or in any way impair Utility’s rights and obligations with respect to its customers or the provision of Utility Services except as specifically and expressly set forth in the Agreement and as allowed by law.

7. **Customer Inquiries and Complaints.** Utility will use reasonable and diligent efforts to respond to, address and resolve customer inquiries and complaints regarding this Agreement, SNG, Customer Credits or Price Adjustments, or Incremental Costs. Utility agrees to collaborate with IFA regarding any generic or broad based formal communications (“Formal Communications”) to Customers relating to the Agreement, SNG, the Customer Portion and/or Incremental Costs. The content of the communications between Utility and its Customers shall be in the reasonable discretion of the Utility as long as the general message is within the spirit of the agreed upon Formal Communications. Complaints that the Utility is unable to resolve shall be referred to the IFA.

8. **Audit Rights.** IFA, or its authorized representatives, will have the right, at all reasonable times during normal business hours, to audit, examine or review Utility’s books, records, documents, data and information which relate to the billing and collection services described in this Agreement. Any dispute between the Utility and IFA arising from the exercise of these audit rights shall be submitted to the IURC for resolution pursuant to Section 13.

Each year the IFA will select an independent third party to conduct an audit to evaluate, measure and verify the mechanism and process that the IFA uses to calculate the Customer Portion. Such an analysis shall take into account all pertinent costs associated with the transactions. The costs of the auditor’s services shall be allocated to the Subject Utilities in the same manner as the Customer Portion. The auditor shall prepare a written report that shall be provided annually in written or electronic form to the IURC, the Indiana Office of Utility Consumer Counselor and the Subject Utilities.

9. **Term and Termination.** This Agreement will commence after (i) its approval by the IURC in all respects, and (ii) upon thirty (30) days prior written notice to Utility from IFA (which will approximately coincide with the date IFA will begin purchasing SNG pursuant to the

PSA). The IFA will provide to Utility all monthly notices provided by Seller to IFA pursuant to Section 3.3(a)(vi) in the PSA beginning with the notice indicating that the Commercial Production Date (as defined in the PSA) is expected to commence within twelve (12) months. This Agreement will remain in effect for as long as the PSA is effective (the "Term"). Notwithstanding the foregoing, if either party is knowingly in default of any material term of this Agreement and such default continues for sixty (60) days after the non-defaulting party provides notice to the defaulting party, the non-defaulting party may submit to the IURC to terminate this Agreement.

10. **General Compliance with Laws.** Utility will comply with all applicable laws in performing the services described herein.

11. **Claims.**

a. In the event that a claim is made against IFA that arises out of Utility's or any of its affiliates' negligence or willful misconduct in the performance of its duties hereunder, Utility will indemnify IFA and all of its officers, employees, representatives, members and agents (collectively the "IFA Indemnified Parties") against, and save the IFA Indemnified Parties harmless from, any loss, damage, injury or liability arising from such claim.

b. No representation or statement not expressly contained herein by reference shall be binding upon Utility as a warranty, indemnification or otherwise.

12. **Status of the Relationship.** The parties hereby acknowledge and agree that nothing contained in this Agreement shall be construed to place the parties in a relationship of contractors, partners, joint venturers, principal and agent, or employer and employee. No party shall have any right, power or authority to create any obligation, express or implied, or make any representation on behalf of any other party, and no party shall hold itself out as having any right, power or authority to create any obligation, express or implied, or to make any representations on behalf of any other party.

13. **Dispute Resolution.** If a party alleges that a dispute exists with respect to the performance of this Agreement, the parties shall enter negotiations in an attempt to resolve the dispute. Such negotiations will occur no later than fifteen (15) business days after written notice of such dispute by a party and shall be concluded within thirty (30) days after the date of such written notice (or such other period as shall be agreed upon by the parties). The obligation of the parties under the immediately preceding sentence shall not restrict or limit to any extent the right of a non-defaulting party to exercise any one or more of the remedies provided under this Agreement, including the right to provide notice of termination under Section 9. All dollar amounts not in dispute must be remitted on the appropriate date and only disputed amounts are subject to this provision.

14. **Notices.** All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing, and delivery shall be deemed sufficient in all respects and to have been duly given as follows: (a) on the actual date of service if delivered personally; (b) at the time of receipt of confirmation from

as being sent if by electronic mail or facsimile transmission; (c) on the third day after mailing if mailed by first-class mail return receipt requested, postage prepaid and properly addressed as set forth in this Section 14; or (d) on the day after delivery to a nationally recognized overnight courier service during its business hours or the Express Mail service maintained by the United States Postal Service during its business hours, in each case, for overnight delivery against receipt, and properly addressed as set forth in this Section:

If to IFA:

Indiana Finance Authority
Attn: Public Finance Director of the State of
Indiana
One North Capitol, Suite 900
Indianapolis, IN 46204

If to Utility:

[Utility Name]
Attn: _____

In the event notice is given by more than one of the methods provided above, notice shall be deemed received on the first day notice is received under any of the methods used above. Any party may change its address or other contact information for notice by giving notice to the other party in accordance with the terms of this Section 14.

15. **Successors and Assigns.** The Agreement shall be binding on the successors and assigns of the IFA and Utility. No party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which will not be unreasonably withheld.

16. **Severability.** In the event any term or provision of this Agreement is found to be invalid or unenforceable under any applicable federal, state or local law, ordinance, rule or regulation, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law, and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

17. **Headings.** The headings in this Agreement are inserted for convenience only and are not to be considered in construction of the provisions hereof.

18. **Governing Law; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. Subject to the dispute resolution provisions of Section 13, the exclusive venue of any claims or causes of action arising from or relating to transactions pursuant to this Agreement shall be filed in the state court sitting in Marion County, Indiana, or the United States District Court for the Southern District of Indiana. Subject to the

dispute resolution provisions of Section 13, the parties hereby consent to the exclusive jurisdiction of such courts.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument.

20. **Recitals.** The recitals set forth following the introductory paragraph of this Agreement are hereby incorporated by reference as part of this Agreement with the same effect as if set forth at length in this section.

[Signatures on the Following Page]

[Signature Page to Billing and Collection Services Agreement]

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement by their duly authorized representatives as set forth below as of the date and year first written above:

INDIANA FINANCE AUTHORITY

[UTILITY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____